

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ALBERT BORRECA,

Plaintiff,

-against-

J.B. HUNT TRANSPORT SERVICES, INC.,
et al.,

Defendants.

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ORDER

CV 07-2460 (ADS)(ARL)

LINDSAY, Magistrate Judge:

Before the court is the defendants' letter application dated May 22, 2008, seeking to bar the plaintiff's counsel from sitting in during the independent psychological examination of the plaintiff. The plaintiff opposes the request by letter also dated May 22, 2008. For the reasons set forth below, the request is granted.

Fed. R. Civ. P. 35, which governs psychiatric examinations, does not address whether an attorney may be present during the examination. *See Tirado v. Erosa*, 158 F.R.D. 292 (S.D.N.Y. 1994). Accordingly, "district courts in this circuit have both permitted and refused to permit third parties to attend Rule 35 examinations" depending on the particular facts of the case. *Id.* at 295. However, unlike state courts, federal courts generally prohibit attorneys from being present during psychological examinations. *See DiBari v. Incaica Cia Armadora, S.A.*, 126 F.R.D. 12, 13 (E.D.N.Y. 1989). The plaintiff has presented no facts which suggest that the court should be deviate from the general rule. Thus, plaintiff's counsel is barred form sitting in during the plaintiff's examination.

Dated: Central Islip, New York
May 27, 2008

SO ORDERED:

/s/
ARLENE R. LINDSAY
United States Magistrate Judge